

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY A. KORN, PETER S. WHITNEY
and DALE C. FLANDERS

Application No. 09/707,710

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on August 12, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appellants filed an Information Disclosure Statement (IDS) on November 21, 2003. It is not clear from the record whether the examiner considered the statement submitted or whether the examiner notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

In addition, on December 6, 2004, appellants filed an Appeal Brief under new rules under 37 CFR § 41.37(c), which went into effect on September 13, 2004. In response to appellants' Brief, the examiner mailed an Examiner's Answer on February 28, 2005.

However, a review of the record reveals that the Examiner's Answer is not in compliance with the new rules effective September 13, 2004.

Accordingly, it is

ORDERED that the application is returned to the examiner for resolution of the following issues:

(1) to consider the IDS filed on November 21, 2003,
(2) to notify appellants in writing of consideration of IDS;
(3) to vacate the Examiner's Answer mailed on February 28, 2005, and to submit a substitute Examiner's Answer which is in compliance with the new rules; and

(4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

CRAIG R. FEINBERG
Program and Resource Administrator
(571) 272-9797

cc: J. Grant Houston
Axsun Technologies, Inc.
1 Fortune Drive
Billerica, MA 01821

CRF/clm/lc